

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 31 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PANCHAL MANILAL MAGANLAL

Versus

VIMLABEN D/O SHANKARCHAND HARKHCHAND

Appearance:

MR RN SHAH for Petitioner

MR KV SHELAT for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 07/04/2000

ORAL JUDGEMENT

1. Appellant-original plaintiff has filed this appeal under Section 9 of the Ahmedabad City Civil Court Act, 1961, challenging judgment and decree dated September 3, 1978, passed by the learned Judge, Court no.16, City Civil Court, Ahmedabad, in Civil Suit no.1983 of 1976, by which the appellant's suit for possession of suit premises bearing Municipal Census No.1353, Survey No.2008, situated in Khadia, Ward No.2, Ahmedabad, came to be dismissed with costs.

2. The appellant was the owner of the property bearing Municipal Census No.1353, Survey No.2008, situated in Khadia, Ward No.2, Ahmedabad (hereinafter referred to as 'suit premises' for the sake of brevity). Formerly, the suit premises was in occupation of Bai Suraj, who was tenant therein, Bai Suraj died on December 8, 1969. The respondent is daughter of Bai Suraj. The respondent had married with one Ranchhodlal Mathurdas since many years and was residing as member of her

husband's family and she was never member of deceased-tenant's family. The respondent had never resided with deceased-tenant as member of her family. It was pleaded that the respondent, being the only daughter of deceased-tenant, she had entered into the suit premises under the pretext of performing obsequies ceremony of her deceased mother and had continued to occupy suit premises since then. The appellant, therefore, contended that possession of the respondent in the suit premises was illegal, without any authority and she occupied suit premises as trespasser. The appellant had called upon the respondent to vacate suit premises but to no avail. The appellant was, therefore, constrained to file suit for getting possession of suit premises and for claiming mense profits in respect thereof from the respondent.

3. The respondent filed her written statement at Exh.9, inter alia, contending that the Court has no jurisdiction to try the suit as the respondent was not trespasser in the suit premises, but as she was residing with her deceased mother as a member of her family since last five years prior to date of death of her mother, she, being the only heir and legal representative of mother, who was tenant of suit premises, had become tenant under the relevant provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('Rent Act' for short). It was contended that the appellant had filed suit against her mother seeking her eviction from the suit premises on the ground that the same were sublet to the husband of the respondent and the said suit came to be dismissed, whereupon, Civil Appeal No.204 of 1969 was preferred before the Appellate Bench of the Small Causes Court, Ahmedabad. On the death of her mother, original tenant, the respondent was impleaded as heir and legal representative of the original tenant in the said appeal and, therefore, the respondent was not trespasser but tenant of suit premises. It was contended that no cause of action had arisen to the appellant for filing suit against the respondent and, therefore, the suit be dismissed with costs.

4. On rival contentions raised by the parties, learned trial Judge raised necessary issues at Exh.14. The appellant examined himself at Exh.17. The respondent examined herself at Exh.43. Both the parties produced documentary evidence, reference to which shall be as and when necessary during course of the judgment. The trial Judge, on appreciation of oral as well as documentary evidence, held that the appellant had failed to prove that the respondent was trespasser in the suit premises.

It was further held that the respondent had proved that she was tenant of the suit premises. The trial court further held that it had jurisdiction to try the suit. On the basis of abovereferred to conclusions, learned City Civil Judge, Court No.7, dismissed the suit of the appellant, which has given rise to filing of this appeal.

5. Learned counsel for the appellant has taken me through entire record and proceedings of the trial court and contended that the respondent, at the time of death of the original tenant, was not residing with her, and, at the time of death of her mother, she was residing with her husband and, therefore, she cannot claim that she had become a statutory tenant on death of the original tenant. Learned counsel for the appellant further submitted that the respondent was not a member of the deceased tenant's family and at the time of death of her mother, she was not residing with the deceased-tenant and, therefore, she cannot claim tenancy rights of the suit premises. Learned counsel for the appellant therefore submitted that the appellant had led sufficient evident that, as the respondent was not residing with deceased tenant at the time of death, she cannot claim tenancy rights of the suit premises and, therefore, the trial court has committed error in not holding that the respondent was a trespasser of the suit premises and, therefore, the appeal be allowed with costs.

6. Learned counsel for the respondent submitted that the respondent was only daughter of the deceased-tenant and was residing with her mother during her last days as she was not keeping well. Learned counsel for the respondent submitted that the respondent was a member of deceased family and she had right to claim tenancy rights under the relevant provisions of the Rent Act and, therefore, the trial court was justified in holding that the respondent was not trespasser but was tenant of the suit premises and had rightly dismissed the plaintiff's suit for possession.

7. From the record, it is borne out that the mother of the respondent, Bai Suraj, was tenant in the suit premises. Bai Suraj died on December 8, 1969. Before death of Bai Suraj, the appellant had instituted H.R.P. No.205 of 1967 against deceased Bai Suraj and the husband of the respondent on the ground that deceased Bai Suraj had sublet the suit premises to her daughter (respondent herein) and her son-in-law. The said suit was dismissed by the Small Causes Court, against which, the appellant had preferred Civil Appeal No.204 of 1969 before the Appellate Bench of the Small Causes Court, Ahmedabad.

Bai Suraj died on December 6, 1969, i.e. during pendency of the appeal. The respondent was joined in the said appeal as heir and legal representative of deceased-respondent Bai Suraj. The appeal was dismissed by the Appellate Bench of the Small Cause Court, Ahmedabad. From the record, it becomes evident that the respondent along with her husband was residing in the suit premises since 1964, i.e. during the life-time of tenant, Bai Suraj. It is borne out from the evidence of the respondent that deceased Bai Suraj was suffering from blood pressure and heart disease and, therefore, she, being only daughter, was looking after and was residing along with her family in the suit premises. She also deposed that, because of failing health of her mother, she was continuously residing with her family in the suit premises. She further deposed that, previously, she was residing with her family in a rented house in Devdi's pole but as landlord of that premises wanted to renovate his house, they had shifted to her mother's place and had handed over possession of that premises to the landlord. She also deposed that the landlord of that rented premises had not given possession to them after renovation. She categorically deposed that she, along with her husband, was residing in the suit premises since 1963 and continued to reside there even after death of her mother. The oral evidence of the respondent clearly proves that since 1963, she along with her husband and family was residing in the suit premises.

8. In *Mohanlal Mansukhbhai vs. Punjiben*, reported in (1977) 18 GLR 228, Division bench of this Court has ruled as under:

"Under Section 5(11)(c) of the Bombay Rent Control Act on the death of the statutory tenant any member of his family residing with him at the time of, or within three months immediately preceding his death, is entitled to become a tenant. Such rent restrictions measures were intended to protect weaker sections of the community with a view to ultimately protecting the interest of the community in general by creating equality of bargaining power. When, therefore, the legislature in the context of such measure based on public policy widens protection by such inclusive definition to include on death of statutory tenant, members of the family residing with him at the time of, or within three months immediately preceding his death, by giving them statutory right of becoming a tenant, wide amplitude or provision could not be curtailed on any assumption that the benefit must have been contemplated not to enure for successive descendants but for only one person alone, if said right would further devolve on the death of that statutory tenant in

his turn to one in whom the legislature recognises juridical possession in such a measure to protect the community."

Admittedly, the respondent, along with her husband and family members, was residing in the suit premises with deceased-tenant Bai Suraj since the year 1963. The Small Causes court, in H.R.P. Suit No.205 of 1967 and in Civil Appeal No.204 of 1969, had already rejected the appellant's case that the deceased-tenant had sublet the suit premises to her son-in-law and daughter. Therefore, the respondent and her husband had become statutory tenant under Section 5(11)(c) of the Rent Act on the demise of the deceased-tenant Bai Suraj. In no circumstances, the respondent, who is daughter of the deceased-tenant, can be called trespasser of the suit premises. The trial court had appreciated evidence properly and had held that the respondent cannot be called trespasser of the suit premises. The reasoning and conclusion of the trial court are based on oral as well as documentary evidence. In my opinion, the trial court had not erred in disbelieving the appellant's case that the respondent was not family member of the deceased-tenant at the time of her death and, therefore, she cannot be called trespasser of the suit premises. The findings and conclusions of the trial court are just and proper and, in my opinion, no interference is called for by this Court in this appeal.

9. As a result of foregoing discussion, the appeal fails and is dismissed with no order as to costs.

(swamy)